



## *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*  
NORTHERN REGIONAL OFFICE

Matthew J. Strickler  
Secretary of Natural Resources

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David K. Paylor  
Director

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
BOARD OF TRUSTEES, OAK GROVE MENNONITE CHURCH  
FOR THE  
MOUNTAIN VIEW NURSING HOME SEWAGE TREATMENT PLANT  
VPDES Permit No. VA0063347**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Board of Trustees, Oak Grove Mennonite Church regarding the Mountain View Nursing Home Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
6. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft, which is being used as a means of transportation.
7. “DMR” means Discharge Monitoring Report.
8. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility” or “Plant” means the Mountain View Nursing Home Sewage Treatment Plant located at 1776 Elly Road, Aroda, Madison County, Virginia, which treats and discharges treated sewage for the residents of Mountain View Nursing Home.
10. “Mountain View” means the Mountain View Nursing Home owned by Board of Trustees, Oak Grove Mennonite Church that is organized and controlled by Oak Grove Mennonite Church. Oak Grove Mennonite Church is a religious society recognized under Title 57 of Virginia law. Mountain View is a “person” within the meaning of Va. Code § 62.1-44.3.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia
13. “O&M” means operations and maintenance.
14. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.

15. "Permit" means VPDES Permit No. VA0063347 which was issued under the State Water Control Law and the Regulation to Oak Grove Mennonite Church on September 9, 2014, with an expiration date of September 8, 2019. The permit has been administratively continued.
16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Oak Grove Mennonite Church owns the Plant. The Plant is operated by maintenance staff of Mountain View Nursing Home. The Permit allows Mountain View to discharge treated sewage from the Plant, to an unnamed tributary of Great Run in strict compliance with the terms and conditions of the Permit.
2. This Facility discharges to an unnamed tributary of Great Run that has been neither monitored nor assessed. Great Run is located approximately 1.8 miles downstream from Outfall 001. DEQ ambient/biological monitoring station 3-GRA002.01 is located on Great Run at Route 15, approximately 6.3 miles downstream from Outfall 001. The following is the water quality summary for this segment of Great Run, as taken from the 2018 Integrated Report. *E. coli* monitoring finds a bacterial impairment, resulting in an impaired classification for the recreation use. This impairment is nested in the downstream completed Robinson River and Little Dark Run bacteria TMDL for the Lower Robinson River watershed; a bacteria TMDL Implementation Plan for the Lower Robinson River watershed is also complete. Biological monitoring finds a benthic macroinvertebrate impairment, resulting in an impaired classification for the aquatic life use. Citizen monitoring also notes a high probability of adverse conditions for biota. The fish consumption and wildlife uses were not assessed.
3. In submitting DMRs, as required by the Permit, Mountain View has indicated that the Plant exceeded discharge limitations contained in Part I.A.1 of the Permit for the monthly concentration average of Total Suspended Solids (TSS), and the monthly concentration average and weekly concentration maximum of Ammonia as Nitrogen for the November 2019 monitoring period. Mountain View also reported exceedances of the monthly quantity average and concentration average biochemical oxygen demand (BOD<sub>5</sub>) for the December 2019 monitoring period. Mountain View also failed to meet the minimum limit for Total Residual Chlorine (after chlorine contact tank) for the November and December 2019 monitoring periods and for the January and February 2020 monitoring periods, however did not exceed the allowable three exceedances per month for these monitoring periods. Mountain View also failed to meet a condition in the Permit that requires no TRC sample collected at the chlorine tank shall be less than 0.6mg/L for the November 2019 monitoring period.
4. DEQ staff conducted an inspection of the Facility on November 5, 2019. During the inspection, DEQ staff observed partially treated sewage solids discharging from the Plant Outfall. DEQ staff noted that partially treated sewage solids were visible in the water column and on the streambed. This event was reported to DEQ after being told by DEQ staff that it should have been reported.
5. During the November 5, 2019, inspection, DEQ staff also made the following observations:

- a. The O&M Manual for the Facility was not up to date.
  - b. Bar screen debris was placed on the ground, beside the bar screen and anoxic tank.
  - c. During the inspection, operations staff and DEQ staff measured a Total Residual Chlorine (TRC) reading of <0.6mg/L at the outlet of the chlorine contact tank. Facility staff reported their TRC reading on the November 2019 DMR as the monthly minimum.
  - d. During the inspection, both operations staff and DEQ staff collected a sample from the chlorine contact tank, zero'd the colorimeter, added the DPD Total Chlorine Reagent Powder Pillow (powder pillow) and began the timer to analyze for TRC. Prior to the required three minute interval for analysis readout, operations staff told DEQ staff that they believed the TRC sample collected would not meet permit limits, based on the color after the powder pillow had been added. Operations staff stated that since the three-minute window for the powder pillow addition had not been met, he would discard this sample and collect another sample, as directed by the Facility Operator.
6. On January 7, 2020, Mountain View staff reported that a loss of solids from the clarifier due to a mechanical failure in the clarifier air lift/skimmer device had occurred. Mountain View staff estimates that approximately 200 gallons of untreated sewage discharged from the Plant.
7. On January 19, 2020, Mountain View staff reported that a possible loss of solids estimated at 100 gallons or less from the Plant on January 18, 2020.
8. On March 4, 2020, Mountain View staff reported that the Plant experienced a loss of solids estimated at less than 400 gallons, due to an upset condition caused by a malfunction in the plant clarifier, from the Plant into an unnamed tributary of Great Run. Mountain View staff reported that the loss of solids was caught and stopped within 20 minutes.
9. NRO issued Notice of Violation No. W2020-01-N-0001 to Mountain View on January 27, 2020 for the effluent violations noted during the November 2019 monitoring period, the unauthorized discharge observed by DEQ staff during the November 5, 2019 inspection, and the aforementioned November 5, 2019, inspection deficiencies, and NOV No. W2020-03-N-0002 on March 19, 2020, for the effluent violations noted during the December 2019 monitoring period, and the unauthorized discharges reported in January 2020.
10. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”

11. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Part I.A. of the Permit contains effluent limitations.
13. Part I.B.1.c of the Permit states in relevant part that no TRC sample collected at the outlet of the chlorine contact tank shall be less than 0.6mg/L.
14. Part II.A of the Permit states in relevant part that 1) Samples and measurements required by this permit shall be taken at the permit designated or approved location and be representative of monitored activity. a. Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit. c. Samples taken shall be analyzed in accordance with 1 VAC 30-45, Certification for Noncommercial Environmental Laboratories, or I VAC 30-46, Accreditation for Commercial Environmental Laboratories.
15. Part II.F of the Permit states that except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.
16. Part II.G of the Permit states that any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II.F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of the discovery of the discharge. The written report shall contain: 1) A description of the nature and location of the discharge; 2) The cause of the discharge; 3) The date on which the discharge occurred; 4) The length of time that the discharge continued; 5) The volume of the discharge; 6) If the discharge is continuing, how long it is expected to continue; 7) If the discharge is continuing what the expected total volume of the discharge will be; and 8) Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges, not authorized by this permit. Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.
17. Part I.C.3 of the Permit states in relevant part that the permittee shall maintain a current Operations and Maintenance (O&M) Manual for treatment works that is in accordance

with the Virginia Pollutant Discharge Elimination System Regulations at 9 VAC 25-31 and the Sewage Collection and Treatment Regulations at 9 VAC 25-790.

18. Part II.Q of the Permit states in relevant part that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.
19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
20. The Department has issued no other permits or certificates to Mountain View.
21. The unnamed tributary of Great Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
22. Based on the results of November 5, 2019, site visit, and DMRs submitted to DEQ, the Board concludes that Mountain View has violated Va. Code § 62.1-44.5, 9 VAC 25-31-50, and Part I.A, Part I.B.1.c, Part I.C.3, Part II.A, Part II.F, Part II.G, and Part II.Q of the Permit by discharging treated sewage from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(4)- C(21) above.
23. Mountain View submitted a written response to the Notice of Violation on February 4, 2020.
24. Mountain View submitted O&M Manual revisions to DEQ on February 26, 2020.
25. On March 12, 2020, Department staff met with representatives of Mountain View to discuss the violations, including Mountain View’s February 4, 2020, written response.
26. In order for Mountain View to complete its return to compliance, DEQ staff and representatives of the Facility have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Board of Trustees, Oak Grove Mennonite Church and Board of Trustees, Oak Grove Mennonite Church agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,976.25 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Board of Trustees, Oak Grove Mennonite Church shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Board of Trustees, Oak Grove Mennonite Church shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the Board of Trustees, Oak Grove Mennonite Church for good cause shown by the Facility or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Board of Trustees, Oak Grove Mennonite Church admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Board of Trustees, Oak Grove Mennonite Church consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mountain View Nursing Home, Inc. Board of Trustees, Oak Grove Mennonite Church, declares it has received fair and due process under the Administrative Process Act and the



State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Board of Trustees, Oak Grove Mennonite Church to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Board of Trustees, Oak Grove Mennonite Church shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Mountain View Nursing Home, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Board of Trustees, Oak Grove Mennonite Church shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Board of Trustees, Oak Grove Mennonite Church. Nevertheless, Board of Trustees, Oak Grove Mennonite Church, agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Board of Trustees, Oak Grove Mennonite Church, has completed all of the requirements of the Order;
  - b. Board of Trustees, Oak Grove Mennonite Church petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Board of Trustees, Oak Grove Mennonite Church.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Board of Trustees, Oak Grove Mennonite Church from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

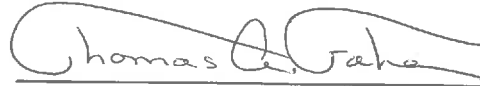
12. Any plans, reports, schedules or specifications attached hereto or submitted by Board of Trustees, Oak Grove Mennonite Church, and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Board of Trustees, Oak Grove Mennonite Church certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Board of Trustees, Oak Grove Mennonite Church to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Board of Trustees, Oak Grove Mennonite Church.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Board of Trustees, Oak Grove Mennonite Church, voluntarily agrees to the issuance of this Order.

Consent Order

Board of Trustees, Oak Grove Mennonite Church – Mountain View Nursing Home Sewage Treatment Plant;  
VPDES Permit No. VA0063347

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And it is so ORDERED this 30<sup>th</sup> day of November, 2020.

A handwritten signature in black ink, appearing to read "Thomas A. Faha", written over a horizontal line.

Thomas A. Faha Northern Regional Director  
Department of Environmental Quality

Consent Order

Board of Trustees, Oak Grove Mennonite Church – Mountain View Nursing Home Sewage Treatment Plant;  
VPDES Permit No. VA0063347

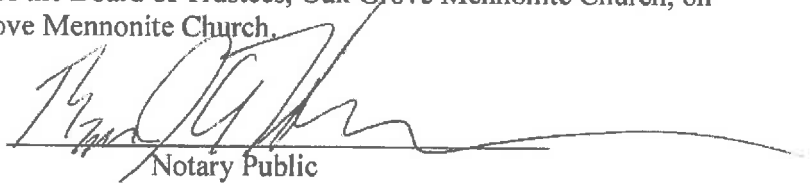
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Board of Trustees, Oak Grove Mennonite Church voluntarily agrees to the issuance of this Order.

Date: 9/29/20 By: Harry F. Yoaler Chair - Trustee  
(Person) (Title)

Commonwealth of Virginia  
City/County of Madison

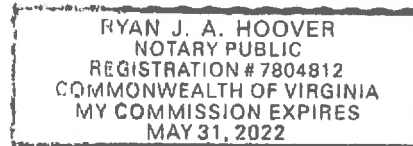
The foregoing document was signed and acknowledged before me this 29 day of September, 2020, by Harry F. Yoaler who is Chair of Trustees of the Board of Trustees, Oak Grove Mennonite Church, on behalf of Board of Trustees, Oak Grove Mennonite Church.

  
Notary Public

740 4812  
Registration No.

My commission expires: May 31, 2022

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

**Mountain View Nursing Home, Inc. shall:**

**1. Unpermitted Discharge/Spill**

- a. Conduct and document daily inspections of the final effluent at the Outfall and the condition of the receiving stream. Said documentation shall be submitted to DEQ for a period of three consecutive months following execution of this Order, and shall be submitted to DEQ and directed to the attention of NRO Enforcement, by the 10th day of the following month. After such time, the documentation shall be maintained on site and accessible upon DEQ request. Should sewage solids be observed in the final effluent and or in the receiving stream, it shall be reported to DEQ pursuant to Permit Condition II.F and II.G.

**2. Operation and Maintenance**

- a. The licensed Facility Operator shall visit the Facility at a frequency of at least three times per month, and shall document visits to the Facility in a written log. The licensed Facility Operator shall also document in writing any assistance/guidance that is provided to the trainee and maintain this documentation so that it is available upon DEQ request. This frequency of site visits by the Facility Operator shall be incorporated into the O&M Manual. Within 90 days of said amendment, the revised O&M Manual shall be submitted to DEQ for review and comment.

**3. Monitoring**

- a. The Facility shall monitor for *E. coli*, BOD and TSS, at a frequency of once per week for three (3) months. If sampling demonstrates continued compliance with permitted limits, with approval from DEQ, Mountain View may request to revert to permitted sampling frequencies. If continued compliance is not achieved, Mountain View shall submit a compliance plan to DEQ for review and comment within 30 days of notification from DEQ, that details how they plan to comply with permitted limits. Once notified by DEQ said plan shall be implemented and shall become enforceable pursuant to this Order.

**4. DEQ Contact**

Unless otherwise specified in this Order, The Facility shall submit all requirements of Appendix A of this Order to:

**Attention Enforcement  
VADEQ- Northern Regional Office  
13901 Crown Court  
Woodbridge, VA 22193**